

**DECISION**



19422 *Kratzer*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-203582

DATE: September 18, 1981

MATTER OF: E. Lefcheck Contractors, Inc.

**DIGEST:**

1. Protest that bids were not evaluated properly is denied where record shows that they were evaluated on basis stated in IFB.
2. Protest alleging impropriety in solicitation which was apparent prior to bid opening is dismissed as untimely since it was not filed before bid opening.
3. GAO does not review affirmative determinations of responsibility absent showing that procuring officials may have committed fraud or failed to apply definitive responsibility criteria.

E. Lefcheck Contractors, Inc., protests the award of a contract to M. E. Flow, Inc. under invitation for bids (IFB) DABT56-81-B-0014 issued by the Department of the Army for the maintenance of five buildings at the Night Vision Laboratory at Fort Belvoir, Virginia. Lefcheck alleges that the bids were not evaluated properly; that the IFB's listing of estimated cost of replacement parts for which the Government would reimburse the contractor was not accurate; and that the awardee is incapable of performing the contract.

The protest is denied in part and dismissed in part.

The IFB provides that the Government will reimburse the contractor for certain replacement parts in addition to paying the contract price for the maintenance services.

[ 116360 ]

018565

The bidding schedule lists under spaces for yearly maintenance prices for each of the five buildings the amount of \$10,000 as the estimated Government expenditure for the parts. Three of the four bidders added this amount to their bid prices for maintaining each building to calculate total bid prices. Lefcheck's total bid price does not include the \$10,000. The contracting officer therefore added \$10,000 to Lefcheck's bid to evaluate it against the other bids, and awarded the contract to the low bidder on that basis, M. E. Flow. In this regard, the IFB stated that the contract would be awarded to the low aggregate bidder.

Lefcheck contends that the IFB was confusing as to whether a bidder should include the \$10,000 figure in its total bid. We believe, however, that the solicitation made it sufficiently clear that bidders were to add the \$10,000 estimated for replacement parts to the total bid price. In any case, bids must be evaluated on the same basis. See Com-Tran of Michigan, Inc., B-200845, November 28, 1980, 80-2 CPD 407 at p. 3. Thus, for evaluation purposes, the contracting officer either had to add \$10,000 to Lefcheck's bid or to subtract \$10,000 from the other bids. It is obvious that the low bidder is the same either way.

The firm also suggests that \$10,000 is not an accurate estimate of the cost of the replacement parts that would be needed. The allegation, however, concerns an alleged impropriety in the solicitation which was apparent prior to bid opening. Since the protest was filed after bid opening, the allegation is dismissed as untimely under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981). In any case, it is obvious that the result of the competition would have been the same no matter what amount was listed in the IFB for replacement parts.

Lefcheck also contends that M. E. Flow, based upon its performance of the 1980 contract for the same services, is not capable of performing the required work. The Army has determined, however, that Flow is a responsible firm. This Office does not review affirmative determinations of responsibility unless the protester shows that procuring officials may have committed fraud or failed to apply definitive responsibility criteria. Northwest Janitorial Service, B-203258, May 28, 1981, 81-1 CPD 420. Neither exception is alleged here.

The protest is denied in part and dismissed in part.

  
Acting Comptroller General  
of the United States